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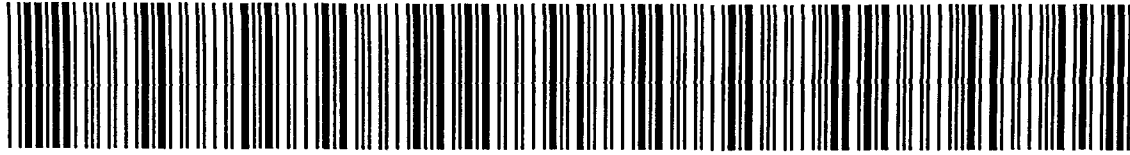
MANUFACTURING AGREEMENT AND LEASE

Dated as of December 18, 1973

GENERAL MOTORS CORPORATION
(ELECTRO-MOTIVE DIVISION)

and

CHICAGO, ROCK ISLAND
AND PACIFIC RAILROAD COMPANY



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MANUFACTURING AGREEMENT AND LEASE dated as of December 18, 1973 between GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION), a Delaware corporation (hereinafter called the "Manufacturer" or "Lessor," as more particularly set forth in the recitals hereof), and CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY, a Delaware corporation (hereinafter called the "Lessee").

WHEREAS, the Manufacturer has agreed to manufacture and subject to the provisions of this Manufacturing Agreement and Lease (hereinafter called the "Lease"), and Lessee has agreed to accept and lease pursuant hereto, the railroad locomotive equipment described in Schedule A hereto (hereinafter called the "Equipment");

WHEREAS, the term "Lessor," whenever used in this Lease, means, before any assignment of its rights hereunder, General Motors Corporation (Electro-Motive Division) and after any such assignment the assignee of such rights to the extent that such rights are assigned and General Motors Corporation (Electro-Motive Division) to the extent that such rights are not assigned and after any subsequent assignment the subsequent assignee of such rights to the extent such rights are assigned and General Motors Corporation (Electro-Motive Division) and prior assignees to

the extent such rights are not assigned and the term "Manufacturer," whenever used in this Lease, means, both before and after such assignment, General Motors Corporation (Electro-Motive Division);

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, Lessor hereby leases the Units (as hereinafter defined) to Lessee, and Lessee hereby takes and hires the Units upon and subject to the following terms and conditions, and the parties hereto do further agree as follows:

ARTICLE ONE

Manufacturing Obligations; Certain Warranties and Indemnities

1.1 Manufacture of Equipment. The Manufacturer will construct the Equipment at its plant specified in Schedule A hereto and will cause the Equipment to become subject to this Lease. Each unit of the Equipment will be a new standard gauge locomotive constructed in accordance with specifications referred to in Schedule A hereto and in accordance with such modifications thereof as may have been agreed upon in writing by the Manufacturer and the Lessee (which specifications and modifications, if any,

are hereinafter called the "Specifications"). The design, quality and component parts of the Equipment will conform to all United States Department of Transportation requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of the Equipment as of the date of this Agreement.

Notwithstanding anything to the contrary contained in this Agreement, it is understood and agreed that there will be incorporated in each unit of Equipment a limited number of used components which will be remanufactured by the Manufacturer and will be the equivalent of new components.

1.2 Subjection to Lease. The Manufacturer will cause each unit of Equipment to be tendered to Lessee at the point specified in Schedule A hereto prior to September 30, 1974. Upon such tender, Lessee will cause an authorized representative to inspect the same, and, if such unit is found to be in good order, to execute and deliver to the Manufacturer a Certificate of Acceptance (hereinafter called the "Certificate of Acceptance"), whereupon such unit shall be deemed to have been accepted by Lessee and shall be and become subject to all the terms and conditions of this Lease.

Such units of Equipment, whenever they become so subject to the terms and conditions of this Lease, are hereinafter called "Units."

Any Equipment which is not accepted and does not become subject to this Lease prior to September 30, 1974 shall be excluded from this Agreement and not included in the terms "Equipment" or "Units" as used in this Lease. In the event of any such exclusion Lessor and Lessee shall execute an agreement supplemental hereto limiting this Agreement to the Equipment accepted hereunder. If such exclusion resulted from one or more of the causes referred to in the next succeeding paragraph, a separate agreement providing for the purchase of such excluded Equipment by the Lessee, on the terms specified in Article 2 of the Sale Agreement and Assignment, dated the date hereof, between the Manufacturer and J. P. Morgan Interfunding Corp. (hereinafter called the "Sale Agreement"), and payment to be made in cash on delivery of such Equipment either directly or by means of a conditional sale, equipment trust or such other appropriate method of financing the purchase as the Lessee and the Manufacturer shall determine.

The Manufacturer's obligation as to time of tender is subject to delays resulting from causes beyond the Manufacturer's reasonable control, including, but not

limited to, acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, or delays in receiving necessary materials.

1.3 Warranties. The Manufacturer warrants that the Units will be built in accordance with the Specifications and warrants that the Units will be free from defects in material (except as to specialties incorporated therein specified by the Lessee and not manufactured by the Manufacturer, in which case the Manufacturer will assign all guarantees, if any, or warranties, as received by it from the manufacturer of the specialty) or workmanship under normal use and service, the Manufacturer's obligation under this paragraph being limited to making good at its plant any part or parts of any Unit which shall, within two years after such Unit has become subject to this Lease or before such Unit has been in scheduled service 250,000 miles, whichever event shall first occur, be returned to the Manufacturer with transportation charges prepaid and which the Manufacturer's examination shall disclose to its satisfaction to have been thus defective; provided, however, that this warranty shall not apply to (i) any locomotive

components which shall have been repaired or altered unless repaired or altered by the Manufacturer or its authorized service representatives, if, in its judgment, such repairs or alterations affect the stability of a Unit or (ii) any Unit which has been subject to misuse, negligence or accident. This warranty is expressly in lieu of all other warranties, express or implied, including any implied warranty of merchantability or of fitness for a particular purpose, and of all other obligations or liabilities on the part of the Manufacturer, except for its other obligations under this Article One, and the Manufacturer neither assumes nor authorizes any person to assume for it any other liability in connection with the construction of the Units except as aforesaid. The Manufacturer reserves the right to make changes in the design of, or add any improvements to, Units at any time without incurring any obligation to make similar changes or additions in respect of Units which have theretofore become subject to this Lease pursuant to Section 1.2 hereof. The Manufacturer further agrees with the Lessee that the acceptance of any Units by Lessee shall not be deemed a waiver by Lessee of any of its rights under this paragraph.

1.4 Patent Indemnities. Except in cases of designs specified by Lessee and not developed or purported

to be developed by the Manufacturer, and articles and materials specified by Lessee and not manufactured by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Lessee from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Lessee because of the use in or about the construction or operation of the Equipment, or any Unit thereof, of any design, article or material which infringes or is claimed to infringe on or to constitute contributory infringement with respect to any patent or other right. Lessee likewise will indemnify, protect and hold harmless Lessor from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against Lessor because of the use in or about the construction or operation of any Unit thereof, of any design specified by Lessee and not developed or purported to be developed by the Manufacturer, or article or material specified by Lessee and not manufactured by the Manufacturer, which infringes or is claimed to infringe on or to constitute contributory infringement with respect to any patent or other right. In case any Unit is held to constitute infringement and the use of such Unit is enjoined, the Manufacturer shall,

at its own expense and at its option, either procure for Lessee the right to continue using said Unit thereof, or replace the same with non-infringing equipment, or modify it so it becomes non-infringing. Without intending any limitation of the foregoing, the Manufacturer agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to Lessee every claim, right and cause of action which the Manufacturer has or hereafter shall have against the originator of any design or against the seller or sellers of any designs or articles or materials purchased or otherwise acquired by the Manufacturer for use in or about the construction or operation of the Units on the ground that any such design, article or material or operation thereof infringes or is claimed to infringe on or to constitute contributory infringement with respect to any patent or other right and the Manufacturer further agrees to execute and deliver to Lessee all and every such further assurance as may be reasonably requested by Lessee, more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. The Manufacturer will give notice to Lessee of any claim known to the Manufacturer from which

liability may be charged against Lessee hereunder and Lessee will give notice to the Manufacturer of any claim known to it from which liability may be charged against the Manufacturer hereunder.

ARTICLE TWO

Leasing of Units

2.1 Term. The initial term of this lease (hereinafter called the "Initial Term") as to each Unit shall commence on the date upon which such Unit has become subject to provisions of this Lease in accordance with Section 1.2 hereof and, unless sooner terminated by Lessee pursuant to the provisions hereof, shall terminate on the sixtieth Quarterly Payment Date (as hereinafter defined). Upon termination of the Initial Term as to any Unit, Lessee, if it shall not then be in default hereunder, shall have the option to extend the term of this Lease (hereinafter called the "Extended Term") on the same terms and conditions (other than payment of rental) as are provided herein for the Initial Term to a date not later than the fifth anniversary of the date of expiration of the Initial Term as to such Unit. Lessee's option to extend the term of this Lease as to any Unit shall be exercised by giving written notice to

Lessor not later than 90 days and not more than 180 days prior to the end of the Initial Term as to such Unit. Lessee shall have no right to terminate this Lease as to any Unit during the Initial Term. Lessee shall have the right to cancel the Extended Term of this Lease as to any Unit by giving written notice to Lessor of cancellation on or before the last day of any calendar quarter of such Extended Term stating that the Lease is cancelled as to such Unit as of the last day of the next calendar quarter of such Extended Term.

2.2 Rentals.

Lessee unconditionally agrees to pay to Lessor 60 consecutive quarterly installments of rental with respect to each Unit during the Initial Term, such rental to be payable commencing three calendar months from the closing date pursuant to Section 2.1 of the Sale Agreement and thereafter every three calendar months therefrom (hereinafter called the "Quarterly Payment Dates") and to be payable in the amounts determined by multiplying the applicable percentage for such Quarterly Payment Date as set forth in Schedule B hereto by the Purchase Price (as defined in Section 2.1 of the Sale Agreement).

Lessee unconditionally agrees to pay rental to Lessor for each Unit subject to this Lease during the Extended Term on the Quarterly Payment Dates during such Extended Term as to each Unit then subject to this Lease, commencing with the Quarterly Payment Date next following the expiration of the Initial Term as to such Unit, in amounts determined in accordance with Section 2.3 hereof.

All payments provided for in this Lease to be made to Lessor shall be made to Lessor at the office of Morgan Guaranty Trust Company of New York, 23 Wall Street, New York, New York 10015 or at such other place as Lessor shall specify in writing, in New York Clearing House funds.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements or reductions due or alleged to be due to, or by reason of, any past, present or future claims of Lessee against Lessor under this Lease or otherwise or against the Manufacturer, nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of Lessor or Lessee be otherwise affected,

by reason of any defect in or damage to or loss of possession or loss of use of or destruction of all or any of the Units from whatsoever cause, the prohibition of or other restriction against Lessee's use of all or any of the Units, the interference with such use by any person or entity (whether public or private), seizure, forfeiture, condemnation or other taking of all or any of the Units or any interest therein, the invalidity or unenforceability or lack of due authorization of this Lease, or lack of right, power or authority of Lessor to enter into this Lease, or by reason of any failure by Lessor to perform any of its obligations herein contained, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease.

2.3 Right to Purchase or Rent and Appraisal. Not more than 270 days before the end of the Initial Term for a Unit, Lessee may cause the Appraiser (as hereinafter

defined) to make an appraisal of the fair market value and/or fair rental value of such Unit, and the report of the Appraiser setting forth its determination of such fair market value and/or fair rental value shall be delivered to Lessor and Lessee not later than 150 days prior to the end of the Initial Term for such Unit. Such fair market value and/or fair rental value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer (or, in the case of fair rental value, lessee)-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing seller (or, in the case of fair rental value, lessor) under no compulsion to sell or lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. Such fair market value, as so determined in respect of such Unit is hereinafter called the "Market Value" of such Unit and such fair rental value shall be the rental for the Extended Term pursuant to Section 2.2.

If Lessee shall cause such Market Value appraisal to be made, Lessee, by written notice delivered to the Lessor not later than 15 days after delivery of the Appraiser's report, unless an event of default shall have occurred and be continuing hereunder, may elect to purchase such Unit at

the end of the Initial Term for such Unit, for a purchase price in cash equal to the Market Value of such Unit. Upon payment by Lessee of the purchase price for a Unit, Lessor shall sell, without representation, and without any warranty or recourse whatsoever on the part of Lessor except for its own acts, such Unit to Lessee, or upon request of Lessee, to Lessee's assignee or nominee and shall execute and deliver to Lessee, of such nominee or assignee, a bill of sale for such Unit paid for, and such other documents as may be required to release such Unit from the terms and scope of this Lease and to transfer title thereto to Lessee or such assignee or nominee, in such form as may reasonably be requested by Lessee, all at Lessee's expense.

The term "Appraiser" shall mean such independent appraiser as Lessor and Lessee may mutually agree upon, or, failing such agreement, a panel of three independent appraisers, one of whom shall be selected by Lessor, the second by Lessee and the third designated by the first two so selected. In the event that the Appraiser is a panel of three, any decision in which any two of its members concur shall be binding and conclusive upon Lessor and Lessee. Lessor and Lessee shall each pay 50% of the expense of obtaining the appraisal.

2.4 Return of the Units Upon Termination of Term.

As soon as practicable on or after the termination of the Initial Term or any Extended Term of this Lease with respect to any Unit (other than a Unit which has suffered a Casualty Occurrence as defined in Section 3.1, or a Unit purchased pursuant to the provisions of Section 2.3), Lessee will, at its own cost and expense, at the request of Lessor, deliver possession of such Unit to Lessor (or, if more than one Unit is involved, shall assemble such Units and deliver possession of same to Lessor) upon such storage track or tracks of Lessee as Lessee may select, and permit Lessor to store such Unit on such tracks for a period not exceeding four months and transport the same, at any time within such four month period, to any reasonable place or places on the lines of railroad operated by Lessee or to any connecting carrier for shipment, all as directed by Lessor, the movement and storage of such Unit to be at the expense of Lessee but at the risk of Lessor. During any such storage period Lessee will permit Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having

jurisdiction in the premises, Lessor shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee so to assemble, deliver, store and transport the Units. If Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence (as hereinafter defined) or which after the termination of this Lease Lessor shall have deemed to have suffered a Casualty Occurrence or if for any other reason Lessor shall elect to abandon any Unit after the termination of this Lease, it may deliver written notice to such effect to Lessee and Lessee shall thereupon assume all, and hold Lessor harmless from all liability arising in respect of any, responsibility of ownership thereof, from and after receipt of such notice but no such abandonment made in the event of any Casualty Occurrence to any Unit shall relieve Lessee from the obligation of paying the Casualty Value of such Unit to Lessor.

2.5 Identification Marks. Lessee will cause each Unit to be kept numbered with its identifying number as set forth in Schedule A and will keep and maintain, plainly, distinctly, permanently and conspicuously on each side of such Unit, in letters not less than one inch in height, the name of Lessor, as Lessor, and the name of any pledgee

or mortgagee of Lessor as Lessor may designate, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of Lessor to such Unit and the rights of Lessor under this Lease. Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such names and word or words shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. Lessee will not change the identifying number of any Unit except with the consent of Lessor and in accordance with a statement of new identifying numbers to be substituted therefor, which consent and statement previously shall have been filed with Lessor by Lessee and filed, registered, recorded or deposited in all public offices where this Lease will have been filed, registered, recorded or deposited. Except as above provided, Lessee will not allow the name of any person, association or corporation to be placed on the Units as a designation that might be interpreted as a claim of ownership, provided, however, that Lessee may cause the Units to be lettered with the names or initials or other insignia customarily used by Lessee or its affiliates on railroad equipment used by it of the same or a similar type for

convenience of identification of the right of Lessee to use the Units under this Lease.

2.6 Impositions, Etc. Lessee agrees that, in addition to the other payments provided herein, it will timely pay, or promptly reimburse Lessor should payment be made by it, for all Impositions (as hereinafter defined) (a) levied or imposed upon, measured by or exacted because of (i) this Lease, or any sale, use, payment, shipment, delivery, transfer of title, possession or return under the terms hereof or of any assignment hereof, (ii) the Units themselves or the interest of Lessee or Lessor in the Units or in the rentals or earnings arising therefrom, (iii) Lessor on account of its acquisition or ownership of the Units or any thereof or on account of the use, operation or leasing thereof or on account of the rentals or earnings arising therefrom or any other amounts payable with respect thereto of (iv) any assignee referred to in Section 5.3 with respect to any amount paid by Lessee to the Manufacturer as part of the purchase price for the Units in excess of the commitment of such assignee or (b) the nonpayment of which might result in any lien or encumbrance upon any of the Units or adversely affect the title or interest of Lessor in or to any of the Units. Lessee further agrees that it will promptly pay or reimburse Lessor for any interest or penalties payable by it resulting from any delay in paying

any Imposition which Lessee has herein agreed to pay or reimburse or from the failure of it to withhold or collect and pay over any such Imposition, provided that Lessee will also reimburse Lessor for any income tax attributable to the inclusion in its income of any payment or reimbursement made by Lessee under this Section 2.6 including any payments made under this proviso (to the extent that such payment or reimbursement is not made with respect to an amount which is deductible by the recipient either in one taxable period or ratably over more than one taxable period, in the computation of liability for such income tax). Notwithstanding the foregoing, Lessee shall not be required to pay or reimburse any Imposition or any such interest or penalties so long as it shall in good faith and by appropriate legal or administrative proceedings be contesting the validity or amount thereof unless thereby, in the judgment of Lessor, the rights or interests of Lessor will be materially endangered.

In the event any reports with respect to Impositions are required to be made on the basis of individual Units Lessee will either make such reports in such manner as to show the interest of Lessor in such Units or will notify Lessor of such requirement and will make such reports in such manner as shall be satisfactory to Lessor.

In the event that, during the continuance of

this Lease, Lessee becomes liable for the payment or reimbursement of any Impositions, interest, penalties or income tax pursuant to this Section 2.6, such liability shall continue, notwithstanding the termination of the term of this Lease, until all such Impositions, interest, penalties and income tax are paid or reimbursed by Lessee.

The term "Impositions," as used herein, shall mean the aggregate of:

A. all local, state or federal property, sales, use, and occupation taxes;

B. all income, gross receipts, franchise and other taxes of any kind or description, excepting only

(i) any federal income taxes payable in consequence of the receipt of payments provided for herein, and

(ii) any local or state income taxes or franchise taxes measured by net income based on such payments, including any gross receipts or gross income taxes in substitution for or by way of relief from the payment of taxes measured by such net income, but only to the extent that such local or state taxes

(x) taken in the aggregate with the

federal income taxes referred to in (i) above, after deducting the actual savings, if any, attributable to tax credits, deductions, or apportionments resulting from such taxes, do not exceed the amount of any such income or franchise taxes (taken in the aggregate as aforesaid after the aforesaid savings) which would have been payable, to the United States and to the state and locality in which Lessor has its principal place of business, if the Units had been used by Lessee exclusively within such state and locality, or

(y) are not in substitution for or by way of relief from the payment of taxes which are specified in (A) above or are specified in (B) above and not excepted;

C. all fees, charges, assessments or licenses;
and

D. the administrative, legal and accounting expenses reasonably incurred (by reason of failure of the Lessee to pay Impositions as required by this Section 2.6) in filing returns or otherwise complying with the applicable legal requirements with respect to any fees, charges, assessments, or licenses;

any taxes specified in (A) above; and any local or state taxes which, but for the transactions contemplated by this Lease, would not have applied to Lessor.

2.7 Compliance With Laws and Rules; Maintenance; Indemnification and Insurance. Lessee agrees, for the benefit of Lessor, to comply with all governmental laws, regulations, requirements and rules (including the rules of the United States Department of Transportation and the current Interchange Rules, or supplements thereto, of the Mechanical Division, Association of American Railroads) with respect to the possession, use, maintenance and operation of each Unit subject to this Lease. In case any equipment or appliance on any such Unit shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such Unit in order to comply with such laws, regulations, requirements, and rules, Lessee agrees to make such changes, additions, and replacements at its own expense; and Lessee agrees at its own expense to use, maintain and operate such Unit in full compliance with such laws, regulations, requirements and rules so long as it is subject to this Lease.

Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease and each Unit stored by or at the direction of Lessor in good order and repair, ordinary wear and tear excepted.

Any parts installed or replacements made by Lessee upon any Unit shall be considered accessions to such Unit and, without cost or expense to Lessor, there shall be immediately vested in Lessor the same interest in such parts as the interest of Lessor in such Unit.

Lessee agrees to indemnify and save harmless Lessor against any charge or claim made against Lessor, and against any expense, payment, loss or liability (including but not limited to counsel fees and expenses, patent liabilities, penalties and interest and fees and expenses incurred on taking delivery) which Lessor may incur in any manner by reason of its ownership of, or which may arise in any manner out of or as the result of the use, operation, condition, purchase, delivery, rejection, storage or return of any Unit (a) while it is subject to this Lease and (b) until Lessee no longer has possession thereof or until no longer stored by Lessee,

whichever is later; and, without intending any limitation of the generality of the foregoing, to indemnify and save harmless Lessor against any charge, claim, expense, payment, loss or liability (including counsel fees and expenses) on account of any accident in connection with the operation, use, condition, delivery, rejection, possession or storage of such Unit resulting in damage to property or injury to any person. The indemnities contained in this paragraph shall survive payment of all other obligations under this Lease or the termination of this Lease.

Lessee agrees to prepare and deliver to Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of Lessor) any and all reports to be filed by Lessor, with any federal, state or other regulatory authority of any jurisdiction in which Units may be located by reason of the ownership by Lessor of the Units or the leasing of the Units to Lessee.

Lessee will at all times after delivery and acceptance of each Unit, at its own expense keep or cause to be kept each such Unit insured by a reputable insurance company or companies in the amounts and against risks customarily insured against by other railroad companies

on similar equipment. All such insurance shall be taken for the benefit of Lessor and Lessee, as their respective interests may appear. Such policy or policies shall insure the respective interests of Lessor and Lessee in the Unit and shall provide that the proceeds of such insurance shall be payable to Lessor. All insurance proceeds received by Lessor with respect to any Unit shall

(a) be paid over to Lessee, in the case of repairable damage to such Unit, upon receipt by Lessor from Lessee of proof in duplicate satisfactory to Lessor of the proper repair of such damage; or

(b) be applied by Lessor, in the case of the loss, destruction or damage beyond repair of such Unit, towards the satisfaction of Lessee's obligation to make the payments required by Article Three hereof.

Lessee's present limit of coverage is \$4,500,000 with the first \$500,000 of losses excluded and Lessor accepts such coverage as presently complying with the requirements of this paragraph. Lessee shall not alter these limits without the prior written consent of Lessor.

ARTICLE THREE

Casualties and Condemnations

3.1 Payment for Casualty Occurrence. Lessee shall bear the risk of and, except as hereinafter in this Section 3.1 provided, shall not be released from Lessee's obligations hereunder in the event of any loss or destruction of or damage to any of the Units for any cause whatsoever after the acceptance of delivery thereof hereunder by Lessee.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed or, in the opinion of Lessee, irreparably damaged, from any cause whatsoever (such occurrences being hereinafter called "Casualty Occurrences") during the Initial or any Extended Term of this Lease, Lessee shall promptly (after it has knowledge of such Casualty Occurrence) and fully inform Lessor in regard thereto and on the next succeeding Quarterly Payment Date after the Casualty Occurrence shall pay to Lessor an amount equal to the accrued rental for such Unit to the date of such payment plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment, in accordance with Schedule C hereto. Upon making such payment in respect of any Unit, the rental for such Unit shall cease

to accrue as of the date of such payment, and the term of this Lease as to such Unit shall terminate. The Casualty Value of each Unit during the Initial or any Extended Term as of any Quarterly Payment Date shall be determined by multiplying the applicable percentage for such Quarterly Payment Date as set forth in Schedule C hereto by the Purchase Price (as defined in Section 2.1 of the Sale Agreement).

3.2 Taking. In the event of any seizure, forfeiture, condemnation or other taking of all or any of the Units, or any interest therein, by any public or governmental body or agency or other person or entity acting under authority of law (hereinafter referred to as a "Taking" and "Taken Units," respectively), or upon Lessee's learning of any proposed Taking, Lessee shall promptly notify Lessor and shall afford to it an opportunity to participate in any negotiations or proceedings with respect to the Taking. Upon final determination of the compensation, if any, to be awarded with respect to the Taken Units, Lessor may at its election

(a) upon written notice to Lessee, terminate this Lease with respect to any of the Taken Units, in which event the compensation for such Taken Units as to which this Lease is terminated shall belong

entirely to Lessor and upon receipt of such compensation by Lessor the amount of the succeeding rental payments to be paid under this Lease shall be reduced by the rental which otherwise would be thereafter payable for such Taken Units; or

(b) upon written notice to Lessee, treat the Taking of any Units as being the complete destruction of such Units, within the meaning of Section 3.1, in which event the compensation for such Taken Units shall belong entirely to Lessee and Lessee shall pay to Lessor the Casualty Value of such Units and any other amounts payable in accordance with the provisions of Section 3.1, as if they had been completely destroyed on the date of such Taking.

ARTICLE FOUR

Defaults and Remedies

4.1 Default. If, during the continuance of this Lease, one or more of the following events (hereinafter sometimes called "Events of Default") shall occur:

A. default shall be made in the payment of any part of the rental provided in Section 2.2 hereof and such default shall continue for five days;

B. Lessee shall make or suffer any unauthorized assignment or transfer of this Lease or any interest herein or of possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of Lessee contained herein and such default shall continue for thirty days after written notice from Lessor to Lessee specifying the default and demanding the same to be remedied;

D. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Lessee, and all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings or otherwise given a status comparable to the

obligations incurred by such a trustee or trustees within thirty days after such appointment, if any, or sixty days after such petition shall have been filed, whichever shall be earlier; or

E. any other proceedings shall be commenced by or against the Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Lessee hereunder), and all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings or otherwise given a status comparable to obligations incurred by such a trustee or trustees or receiver or receivers, within thirty days after such appointment, if any, or sixty days after such proceedings shall have been commenced, whichever shall be earlier;

then, in any such case, Lessor, at its option may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to Lessee terminate this Lease, whereupon all right of Lessee to the use of the Units shall absolutely cease and determine as though this Lease had never been made, but Lessee shall remain liable as hereinafter provided; and thereupon, Lessor may by its agents enter upon the premises of Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of Lessee, or its successors or assigns, to use the Units for any purposes whatever; but Lessor shall nevertheless, have a right to recover from Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction

of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of

(A) the present worth, at the time of such termination, of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease, computed by discounting such rentals to the date of such termination, over

(B) the then present worth of the then fair rental value of such Unit for such period computed by discounting to the date of such termination rentals which may reasonably be obtainable for the use of the Unit during such period, such present worth to be computed in each case on a basis of 9.026% per annum discount, compounded monthly from the respective dates upon

which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, in addition thereto which Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental, including, without limitation, an amount which, net after deduction of all taxes required to be paid by Lessor in respect of the receipt thereof under the laws of the United States or any political subdivision thereof, shall be equal to any portion of the investment credit allowed by Section 38 of the Internal Revenue Code of 1954, as amended, lost by Lessor (under Section 47 of such Code or any similar provision then in effect) as a result of the sale or other disposition of any Unit by Lessor after repossession or return thereof to Lessor upon the occurrence of an Event of Default and (iii) reasonable attorneys' fees and other expenses incurred in collecting any other damages and expenses referred to in (i) and (ii) above.

Each and every power and remedy in this Lease

provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Lessor. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

4.2 Return of Units Upon Default. If this Lease shall terminate pursuant to Section 4.1 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. For the purpose of delivering possession of any Unit or Units

to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

A. forthwith assemble and place such Units upon such storage track or tracks of the Lessee as the Lessor may designate or, in the absence of such designation, as the Lessee may select,

B. permit the Lessor to store such Units on such tracks for a period not exceeding six months at the risk of the Lessee, and

C. transport the same, at any time within such six months' period, to any place or places on the lines of railroad operated by it or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 4.2,

the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whosoever shall be at the time in possession of such Unit.

ARTICLE FIVE

Miscellaneous Provisions

5.1 Annual Reports. On or before May 1 in each year commencing with the year 1975, the Lessee will furnish to the Lessor an accurate statement, as of the preceding January 1 (a) showing the amount, description and numbers of the Units then leased hereunder, the amount, description and numbers of all Units that may have suffered a Casualty Occurrence during the preceding twelve months (or since the date of this Lease, in the case of the first such statement), and such other information (with respect to the condition and state of repair of the Units, compliance by the Lessee with the terms of this Lease, or otherwise) as the Lessor may reasonably request, and (b) stating that, in the case of all Units repainted during the period covered by such statement, the markings required by Section 2.5 hereof

shall have been preserved or replaced.

The Lessor shall have the right by its authorized representative, to inspect the Units and the Lessee's records with respect thereto, at such times as shall be reasonably necessary to confirm to the Lessor the existence and proper maintenance thereof (during the continuance of this Lease) or compliance by the Lessee with the terms of this Lease. The foregoing inspection shall be at the sole cost and expense of the Lessor.

5.2 Opinion of Counsel. Concurrently with the execution and delivery of this Lease, the Lessee will deliver to the Lessor two counterparts of the written opinion of counsel for the Lessee, in scope and substance satisfactory to the Lessor and its counsel, to the effect that:

A. the Lessee is a corporation legally incorporated and validly existing, in good standing, under the laws of the State of Delaware, with adequate corporate power to enter into this Lease;

B. this Lease has been duly authorized, executed and delivered by the Lessee and constitutes the valid, legal and binding agreement, enforceable in

accordance with its terms, of the Lessee; except as to limitations imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally;

C. this Lease and any assignment thereof, when filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act will protect the Lessor's title and interest in and to the Units in the United States of America, and no filing, recording or deposit with any other Federal, state or local government is necessary in the United States of America to protect the title and interest of the Lessor in and to the Units in the United States of America;

D. no approval is required from any public regulatory body (except such, if any, as shall have been duly obtained or given, specifying the same) with respect to the entering into or performance of this Lease; and

E. the entering into and performance of this Lease will not result in any breach of, or constitute a default under, or result in the creation of any lien, charge or encumbrance upon the Lessee's leasehold interest under the Lease in the Units (except

to the extent that the provisions of any existing mortgage of the Lessee may require the subjection of the leasehold interest of the Lessee to the lien thereof) pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which the Lessee is a party or by which it may be bound.

5.3 Assignment; Possession and Use. All or any of the rights, benefits and advantages of the Lessor under this Lease, including the right to receive the payments herein provided to be made by the Lessee and the right, title and interest of the Lessor in and to any Units, may be assigned by the Lessor and reassigned by an assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Manufacturer from, any of the obligations of the Manufacturer under Article One hereof to construct and to deliver the Equipment or to respond to its guaranties, warranties and agreements, or relieve the Lessee of its obligations to the Manufacturer under Article One hereof or of any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment either the assignor or

the assignee shall give written notice to the Lessee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all of the Lessor's right, title and interest in and to the Equipment, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Lessee of the notification of any such assignment, all payments thereafter to be made by the Lessee hereunder shall, to the extent so assigned, be made to the assignee at the address of the assignee specified in the aforesaid notice.

The Lessee recognizes that it is the custom of railroad equipment manufacturers to assign agreements of this character and understands that the assignment of this Lease, or of some or all of the rights of the Lessor hereunder, is contemplated. The Lessee expressly represents for the purpose of assurance to any person, firm or corporation considering the acquisition of this Lease or of all or any of the rights of the Lessor hereunder, and for the purpose of inducing such acquisition; that in the event of such assignment by the Lessor as hereinbefore provided the rights of such assignee to the unpaid rental

hereunder or such part thereof as may be assigned, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer with respect to the Units or the delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Lessee by the Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Lessee against and only against the Manufacturer.

In the event of any such assignment or successive assignments by the Lessor of title to the Equipment and of the Lessor's rights hereunder with respect thereto, the Lessee will, whenever requested by such assignee, change the names and word or words to be marked on each side of each Unit so as to indicate the title of such assignee to such Unit with such names and word or words as shall be specified by such assignee, subject to the requirements of the laws of the jurisdictions in which the Units shall be operated relating to such names and word or words for use on equipment covered by leases of railroad equipment. The cost of marking such names and word or words with

respect to the first and second assignee of this Lease shall be borne by the Lessee. The cost of marking such names and word or words in connection with any subsequent assignment will be borne by the subsequent assignee.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign, transfer or encumber its leasehold interest under this Lease in the Units or any of them (except to the extent that the provisions of any existing mortgage on any of the lines of railroad of the Lessee may subject such leasehold interest to the lien thereof); and, in addition, the Lessee, at its own expense, will as soon as possible cause to be duly discharged any lien, charge or other encumbrance (other than an encumbrance resulting from claims against the Lessor not related to the ownership of the Units) which may at any time be imposed on or with respect to any Unit or the interest of the Lessor or the Lessee therein. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the next succeeding paragraph hereof.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Units and to the use thereof upon the lines of railroad owned or operated by it (either alone or jointly) or by any corporation a majority of whose voting stock (i.e., having ordinary voting power for the election of a majority of its Board of Directors) is owned directly or indirectly by the Lessee, or upon lines of railroad over which the Lessee or any such corporation has trackage or other operating rights or over which railroad equipment of the Lessee is regularly operated pursuant to contract or upon lines of other railroads in normal interchange of equipment for a period in any one case not to exceed one week.

Nothing in this Section 5.3 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation (which shall have duly assumed the obligations hereunder of the Lessee) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety. The Lessee agrees that during the term of this Lease, the Lessee will not permit any Unit to be used outside the United States of America.

5.4 Recording. Prior to the delivery of any Units, the Lessee will cause this Lease and any assignment hereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Lessor, for the purpose of proper protection, to the satisfaction of the Lessor, of its title to the Units, or for the purpose of carrying out the intention of this Lease. The Lessee will promptly furnish to the Lessor certificates or other evidence of such filing, registering, recording and depositing.

5.5 Interest. Anything to the contrary herein contained notwithstanding, the Lessee will pay, to the extent legally enforceable, interest at the rate of 10.026% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof.

Interest under this Lease shall be determined on the basis of a 360-day year of twelve 30-day months.

5.6 Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

If to the Lessor:

General Motors Corporation
3044 West Grand Boulevard
Detroit, Michigan 48202

Attention: Harry G. Olson
Assistant Treasurer

If to the Lessee:

Chicago, Rock Island and Pacific
Railroad Company
139 West Van Buren
Chicago, Illinois

Attention: Treasurer

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

5.7 Extension Not a Waiver. No delay or omission in the exercise of any power or remedy herein provided or otherwise available to the Lessor shall impair or affect the Lessor's right thereafter to exercise the same. Any extension of time for payment hereunder or other indulgence duly granted to the Lessee shall not otherwise alter or affect the Lessor's rights or the obligations of the Lessee hereunder. The Lessor's acceptance of any payment after it

shall have become due hereunder shall not be deemed to alter or affect the Lessee's obligations or the Lessor's rights hereunder with respect to any subsequent payments or defaults therein.

5.8 Severability; Section Headings. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

All section headings are inserted for convenience only and shall not affect any construction or interpretation of this Lease.

5.9 Supplement. Not later than fifteen days after all of the Units of Equipment have been accepted by Lessee in accordance with Section 1.2 of this Lease, there shall be prepared, upon the written request of the Lessor, by Lessee for execution by Lessee and the Manufacturer (and, in the event that this Lease has been assigned in whole or in part, by any assignee) a supplement hereto setting forth the identifying numbers of the Units and the dates of delivery

thereof and confirming that such Units have been accepted by the Lessee and have become subject to all of the terms and provisions of this Lease. Lessee shall thereupon, at its expense, cause said supplement to be executed and filed pursuant to Section 20c of the Interstate Commerce Act.

5.10 Execution in Counterparts; No Oral Variations; Complete Agreement. This Lease, and any lease supplemental hereto, may be executed in several counterparts, each of which so executed shall be deemed to be an original, and in each case such counterparts together shall constitute but one and the same instrument. No variation of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and duly executed on behalf of the parties hereto. This Lease exclusively and completely states the rights of the Manufacturer and Lessee with respect to the Equipment and supersedes all other agreements, oral or written relating thereto.

5.11 Governing Law. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by

Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, Lessor and Lessee, each pursuant to due corporate authority, have caused these presents to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested, as of the date first above written.

[CORPORATE
SEAL]

Attest:

W. H. Thomas
Assistant Secretary



Attest:

E. J. Wilson
Secretary

GENERAL MOTORS CORPORATION
(ELECTRO-MOTIVE DIVISION)

By

Harold Z. Smith
Vice President

CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY

By

Thomas J. Neenan
VICE President

STATE OF *Illinois*)
COUNTY OF *Cook*) : ss.:

On this *18th* day of *December*, before me personally appeared *HAROLD L. SMITH*, to me personally known, who, being by me duly sworn, says that he is a Vice President of General Motors Corporation that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

MY COMMISSION EXPIRES JULY 11, 1976

Zula C. Clair

Notary Public

STATE OF *Illinois*)
COUNTY OF *Cook*) : ss.:

On this *18th* day of *December, 1973*, before me
personally appeared *THOMAS* *MEGAN*, to me per-
sonally known, who, being by me duly sworn, says that he
is *VICE* President of CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY, that one of the seals affixed to the
foregoing instrument is the corporate seal of the said
corporation, that said instrument was signed and sealed
on behalf of said corporation by authority of its Board
of Directors, and he acknowledged that the execution of
the foregoing instrument was the free act and deed of
said corporation.

[NOTARIAL SEAL]

Richard Allan Weise
Notary Public

NOTARY PUBLIC STATE OF ILLINOIS
MY COMMISSION EXPIRES DEC. 24, 1974

SCHEDULE A

Equipment

<u>No. of Units</u>	<u>Description</u>	<u>Specifications</u>	<u>Manufacturer's Serial Nos.</u>	<u>Road Nos.</u>	<u>Delivery Point</u>
10	Model SD-40-2 3000 H.P. Six Motor Diesel-Electric Locomotives	Specification No. 8087 Dated January 3, 1972	73676-1 through 73676-10 inclusive	4790 through 4799 inclusive	McCook, Illinois*

Delivery: December 1973

* Transportation costs from Manufacturer's plant to delivery point to be paid by Lessee.

SCHEDULE B

Rentals

<u>Quarterly Payment Date</u>	<u>Applicable Percentage For Computation of Rental</u>	<u>Quarterly Payment Date</u>	<u>Applicable Percentage For Computation of Rental</u>
1	3.31	31	2.50
2	3.31	32	2.50
3	3.31	33	2.50
4	3.31	34	2.50
5	3.31	35	2.50
6	3.31	36	2.50
7	3.31	37	2.50
8	3.31	38	2.50
9	3.31	39	2.50
10	3.31	40	2.50
11	3.31	41	2.50
12	3.31	42	2.50
13	3.31	43	2.50
14	3.31	44	2.50
15	3.31	45	2.50
16	3.31	46	2.50
17	3.31	47	2.50
18	3.31	48	2.50
19	3.31	49	2.50
20	3.31	50	2.50
21	2.50	51	2.50
22	2.50	52	2.50
23	2.50	53	2.50
24	2.50	54	2.50
25	2.50	55	2.50
26	2.50	56	2.50
27	2.50	57	2.50
28	2.50	58	2.50
29	2.50	59	2.50
30	2.50	60	2.50

SCHEDULE C

Casualty Values

<u>Quarterly Payment Date</u>	<u>Applicable Percentage for Computation of Casualty Value</u>	<u>Quarterly Payment Date</u>	<u>Applicable Percentage for Computation of Casualty Value</u>
1	100.329	31	64.152
2	100.522	32	63.037
3	100.579	33	61.873
4	100.497	34	60.663
5	100.274	35	59.408
6	99.980	36	58.106
7	99.613	37	56.756
8	99.174	38	55.365
9	98.659	39	53.931
10	98.075	40	52.453
11	97.420	41	50.931
12	96.693	42	49.370
13	90.795	43	47.769
14	89.927	44	46.128
15	88.988	45	44.446
16	87.979	46	42.728
17	86.899	47	40.974
18	85.751	48	39.183
19	84.536	49	37.354
20	83.251	50	35.494
21	77.608	51	33.600
22	77.010	52	31.673
23	76.358	53	29.713
24	75.652	54	27.718
25	74.890	55	25.689
26	74.078	56	23.624
27	73.215	57	21.523
28	72.299	58	19.386
29	66.233	59	17.212
30	65.216	60 and thereafter during the Extended Term	15.000

SALE AGREEMENT AND ASSIGNMENT

Dated as of December 18, 1973

between

GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION)

and

J. P. MORGAN INTERFUNDING CORP.

DOCUMENT II

SALE AGREEMENT AND ASSIGNMENT dated as of December 18, 1973 between GENERAL MOTORS CORPORATION (Electro-Motive Division), a Delaware corporation (hereinafter called the "Manufacturer"), and J. P. MORGAN INTERFUNDING CORP., a Delaware corporation (hereinafter called the "Purchaser").

WHEREAS, the Manufacturer has entered into a Manufacturing Agreement and Lease dated as of December 18, 1973 (hereinafter called the "Lease") with Chicago, Rock Island and Pacific Railroad Company (hereinafter called the "Lessee") pursuant to which the Manufacturer has agreed to manufacture and subject to the provisions of the Lease, and Lessee has agreed to accept and lease pursuant thereto, the units of railroad locomotive equipment described in Schedule A thereto (hereinafter called the "Equipment" or, as to any such units which shall have become subject to the Lease in accordance with Section 1.2 thereof, and to this agreement pursuant to Section 1.2 hereof, the "Units");

WHEREAS, the Manufacturer is willing to construct, sell and deliver the Equipment to the Purchaser, subject to the provisions of the Lease, and to assign, transfer and set over all of its right, title and interest in and to the Equipment and the Lease to the Purchaser (subject to certain

matters hereinafter set forth) and Purchaser is willing to purchase the Equipment and acquire said right, title and interest of the Manufacturer therein and in and to the Lease on the terms and conditions herein set forth;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE ONE

Construction and Delivery

1.1 The Manufacturer will construct the Equipment in accordance with Section 1.1 of the Lease and will sell and deliver the Equipment to the Purchaser and the Purchaser will purchase from the Manufacturer and accept delivery of and pay for (as hereinafter provided) the Equipment.

1.2 The Manufacturer will deliver the various units of the Equipment to the Purchaser F.O.T. the point specified in, and in accordance with, the delivery schedule set forth in Schedule A to the Lease. The Manufacturer's obligation as to time of delivery is subject, however, to the same matters that are set forth in Section 1.2 of the Lease.

The Equipment shall be subject to inspection and approval prior to delivery by inspectors or other authorized

representatives of the Purchaser (who may be employees of the Lessee), and the Manufacturer shall grant to such inspectors or such authorized representatives reasonable access to its plant. The Manufacturer agrees to inspect materials entering into the construction of the Equipment in accordance with the standard quality control practices of the Manufacturer. From time to time upon the completion of the construction of each unit or of a number of units of the Equipment, such unit or units shall be presented to such inspector or other authorized representative of the Purchaser for inspection at the place designated for delivery of the Equipment and, if each such unit or units conform to the Specifications (as such term is defined in the Lease), such inspector or representative shall execute and deliver to the Manufacturer, in such number of counterparts or copies as may reasonably be requested, a certificate of acceptance (hereinafter called the "Certificate of Acceptance") dated the date of such delivery and stating that such unit or units have been inspected and accepted on behalf of the Purchaser and are marked in accordance with the provisions of Section 3.3 of this agreement, whereupon such units shall be deemed to have been accepted by the Purchaser as of the date of delivery and shall be and become, as of such date, the absolute property of the Purchaser,

subject to the provisions of the Lease and of this agreement. Any Equipment which is not so accepted prior to September 30, 1974 shall be excluded from this agreement and shall not be included in the terms "Equipment" or "Units" as used herein. In the event of any such exclusion Lessor and Lessee shall execute an agreement supplemental hereto limiting this agreement to the Equipment accepted hereunder.

On delivery of each of the units of Equipment hereunder and acceptance thereof on behalf of the Purchaser as aforesaid, the Purchaser, as between the Manufacturer and the Purchaser only, assumes with respect thereto the responsibility and risk of loss.

ARTICLE TWO

Purchase Price and Payment

2.1 The purchase price, exclusive of interest, is \$318,855.00 for each locomotive, Model SD-40, such purchase price in each case including approved modifications and terms for delivery, F.O.T. Manufacturer's plant, McCook, Illinois. Such purchase price is subject to such increase or decrease as may be agreed to in writing by the Manufacturer, the Purchaser and the Lessee. The term "Purchase Price" as used herein shall mean such purchase price as so increased or decreased.

The Purchaser hereby acknowledges itself to be indebted to the Manufacturer in the amount of, and hereby promises to pay without interest to the Manufacturer, the Purchase Price of the Units after the delivery of all the Units pursuant to Section 1.2 hereof on a closing date specified by the Manufacturer on at least three days' written notice to the Purchaser and the Lessee, in full in cash, provided that, as a condition precedent to the obligations of the Purchaser hereunder, there shall have been delivered to the Purchaser the following documents on or prior to the closing date, in such number of counterparts or copies as may reasonably be requested, in form and substance satisfactory to it and to its counsel hereinafter mentioned:

(a) Bills of Sale from the Manufacturer to the Purchaser, transferring to the Purchaser title to each of the Units as of the date of delivery thereof and warranting to the Purchaser that as of that date the Manufacturer had legal title to such Units and good and lawful right to sell such Units and title to such Units was free of all claims, liens and encumbrances of any nature except only the rights of the Purchaser and the rights of the Lessee under the Lease;

(b) Certificates of Acceptance signed by and inspector or other authorized representative of the

Purchaser with respect to each of the Units;

(c) Invoices addressed to the Purchaser only for each of the Units accompanied by or having endorsed thereon a certification by the Lessee as to the correctness of the prices of such Units as set forth in said invoices;

(d) Opinion of Davis Polk & Wardwell, counsel for the Purchaser, dated as of such closing date, stating that (i) the Lease has been duly authorized, executed and delivered by the respective parties thereto and is a valid and binding instrument enforceable in accordance with its terms, (ii) this agreement has been duly authorized, executed and delivered by the respective parties hereto and is a valid and binding instrument, (iii) the Purchaser is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this Agreement, (iv) title to the Units was validly vested in the Purchaser as of the date of delivery thereof and such Units, at such date, were free of all claims, liens and encumbrances except only the rights of the Purchaser and the rights of the Lessee under the Lease, (v) any necessary approval of the Interstate Commerce Commission

or any other governmental authority for the execution and delivery of the Lease and this agreement has been obtained, and (vi) the Lease and this agreement have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Purchaser in any state of the United States of America;

(e) Opinion of counsel for the Lessee, addressed to the Purchaser, dated as of such closing date, to the effect specified in Section 5.2 of the Lease; and

(f) Opinion of counsel for the Manufacturer, addressed to the Purchaser, dated as of such closing date, to the effect set forth in clauses (iii) and (iv) of subparagraph (d) above and stating that (i) the Manufacturer is a duly organized and existing corporation in good standing under the laws of the state of its incorporation and has the power and authority to own its properties and to carry on its business as now conducted and (ii) the Lease and this agreement have been duly authorized, executed and delivered by the Manufacturer and are valid instruments binding upon the Manufacturer and

enforceable against the Manufacturer in accordance with their terms.

The foregoing opinions as to any agreement being a valid and binding instrument enforceable in accordance with its terms may be stated to be subject to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally. In giving the opinions specified in foregoing subparagraphs (d) and (e), counsel may rely as to the title to the Units upon the opinion of counsel for the Manufacturer. In giving the opinion specified in foregoing subparagraph (d), counsel may rely, as to any matter governed by the law of any jurisdiction other than New York or the United States, on the opinions of counsel for the Manufacturer or the Lessee.

In the event the Purchaser does not make the payment described in this Section 2.1, by reason of failure of a condition precedent or otherwise, the Purchaser shall, at the request of the Manufacturer, deliver to the Manufacturer Bills of Sale from the Purchaser to the Manufacturer, transferring to the Manufacturer, without representation or warranty, title to each of the Units.

ARTICLE THREE

Assignment to Purchaser and Certain Covenants

3.1 The Manufacturer hereby assigns, transfers,

and sets over unto the Purchaser, its successors and assigns:

(a) All the right, title and interest of the Manufacturer in and to each Unit of the Equipment when and as delivered and accepted under the Lease and this agreement.

(b) All the right, title and interest of the Manufacturer in and to the Lease (except the right to construct and deliver the Equipment and the right to receive reimbursement for taxes paid or incurred by the Manufacturer and the right to indemnity from the Lessee under Article One thereof if and to the extent Manufacturer incurs liabilities to which any such indemnity applies but without limiting the right of Purchaser to the protection afforded by any such indemnity) and in and to any and all amounts which may be or become due or owing on account of rental under the Lease, and in and to any other sums becoming due from the Lessee under the Lease except for those specifically above excluded from this assignment; and

(c) Except as limited above in subparagraph (b) hereof, all the Manufacturer's rights, powers, privileges and remedies under the Lease;

without any recourse, however, under this agreement against the Manufacturer for or on account of the failure of the Lessee to make any of the payments provided for in, or otherwise to comply with any of the provisions of the Lease; provided, however, that this assignment shall not subject the Purchaser to, or transfer, or pass, or in any way affect or modify, the obligations of the Manufacturer to deliver the Equipment in accordance with the Lease or with respect to its warranties and agreements contained in Article One of the Lease. In furtherance of the foregoing assignment and transfer, the Manufacturer hereby authorizes and empowers the Purchaser in the Purchaser's own name, or in the name of the Purchaser's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Manufacturer, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Purchaser is or may become entitled under this assignment and compliance by the Lessee with the terms and agreements on its part to be performed under the Lease, but at the expense and liability and for the sole benefit of the Purchaser.

3.2 The Manufacturer covenants and agrees that, notwithstanding this assignment, it will perform

and fully comply with each and all of the covenants and conditions of the Lease set forth to be performed and complied with by the Manufacturer. The Manufacturer further covenants and agrees that it will warrant to the Purchaser that at the time of delivery of each Unit of the Equipment to the Purchaser hereunder it had legal title to such Unit and good and lawful right to sell such Unit and the title to such Unit was free of all claims, liens and encumbrances of any nature except only the rights of the Purchaser hereunder and the rights of the Lessee under the Lease; and the Manufacturer further covenants and agrees that it will defend the title to such Unit against the demands of all persons whomsoever based on claims originating prior to said delivery of such Unit by the Manufacturer to the Purchaser, all subject, however, to the provisions of the Lease. The Manufacturer will not deliver any of the Equipment to the Purchaser under this Agreement or tender any Equipment to the Lessee under the Lease until the filings and recordations referred to in Section 5.4 of the Lease have been effected.

The Manufacturer covenants and agrees with the

Purchaser that in any suit, proceeding or action brought by the Purchaser under the Lease for any rental or to enforce any provision of the Lease, the Manufacturer will indemnify, protect and hold harmless the Purchaser from and against all expense, loss or damage suffered by reason of any defense, set-off, counterclaim or recoupment whatsoever arising out of a breach by the Manufacturer of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or under Sections 1.3 or 1.4 of the Lease, or by reason of any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Lessee by the Manufacturer. Any and all such obligations shall be and remain enforceable by the Lessee against and only against the Manufacturer and shall not be enforceable against the Purchaser or any party or parties in whom title to the Equipment or any Unit thereof or any of the rights of the Manufacturer under the Lease shall vest by reason of this assignment or of successive assignments.

Except in cases of designs specified by the Lessee and not developed or purported to be developed

by the Manufacturer, and articles and materials specified by the Lessee and not manufactured by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Purchaser from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Purchaser or its assigns because of the use in or about the Equipment, or any Unit thereof, of any design, article or material infringing or claimed to infringe on any patent or other right.

The Manufacturer agrees that any amount payable to it by the Lessee, whether pursuant to the Lease or otherwise, shall not be secured by any lien or charge on any Units of the Equipment.

3.3 The Manufacturer will cause to be plainly, distinctly, permanently and conspicuously marked on each side of each unit of the Equipment, at the time of delivery thereof to the Purchaser, in letters not less than one inch in height, the following legend:

"J. P. Morgan Interfunding Corp., Lessor"

3.4 Upon request of the Purchaser, its successors and assigns, the Manufacturer will execute any

and all instruments which may be necessary or proper in order to discharge of record the Lease or any other instrument evidencing any interest of the Manufacturer in the Equipment.

ARTICLE FOUR

Miscellaneous

4.1 The Purchaser may assign, mortgage, or pledge all or any of its rights under the Lease and this agreement and in and to the Equipment, including the right to receive any payments due or to become due to it from the Lessee, at any time or from time to time, thereunder. In the event of any such assignment, mortgage or pledge any such subsequent or successive assignee, mortgagee or pledgee shall, to the extent of such assignment, mortgage or pledge, enjoy all the rights and privileges and be subject to all the obligations of the Purchaser hereunder.

4.2 The Manufacturer hereby:

(a) represents and warrants to the Purchaser, its successors and assigns, that the Lease was duly authorized and lawfully executed and delivered by it for a valid consideration, that (assuming due authorization, execution and delivery by the Lessee) it is a valid and existing agreement binding upon

the Manufacturer and that it is now in full force without amendment thereto; and

(b) covenants and agrees that it will from time to time and at all times, at the request of the Purchaser or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Purchaser intended so to be.

4.3 The terms of this agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act.

4.4 This agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart. The Purchaser agrees to deliver one of such

counterparts, or a certified copy thereof, to the Lessee. Although this agreement is dated for convenience as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due authority, have caused these presents to be executed in their respective corporate names by officers duly elected and authorized, and their respective corporate seals to be affixed and duly attested, all as of the day, month and year first above written.

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

[Corporate Seal]

Attest:

By

Harold I. Smith
Vice President

W. H. Thomas
ASSISTANT Secretary

J. P. MORGAN INTERFUNDING CORP.

By

Geoffrey D. Whitaker
Manager

STATE OF *Illinois*)
COUNTY OF *Cook*) ss.:

On this *18th* day of *December*, 1973 before
me personally appeared HAROLD L. SMITH, to me
personally known, who, being by me duly sworn, says that
he is a Vice President of GENERAL MOTORS CORPORATION, that
one of the seals affixed to the foregoing instrument is the
corporate seal of said corporation, that said instrument
was signed and sealed on behalf of said corporation by
authority of its Board of Directors and he acknowledged that
the execution of the foregoing instrument was the free
act and deed of said corporation.

Zula C. Clair
Notary Public

[Notarial Seal]

MY COMMISSION EXPIRES JULY 11, 1976

STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

On this 17th day of December, 1973 before me personally appeared *Geoffrey D. Whitaker*, to me personally known, who being by me duly sworn, says that he is Manager of J. P. MORGAN INTERFUNDING CORP., that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledges that the execution of the foregoing instrument was the free act and deed of said corporation.

Ronald V. Bryant

Notary Public

[Notarial Seal]

RONALD V. BRYANT
Notary Public, State of New York
No. 31-5501703
Qualified in New York County
Commission Expires March 30, 1974

ACKNOWLEDGEMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment of Manufacturing Agreement and Lease attached hereto (hereinafter called the "Lease") made by, the Sale Agreement and Assignment attached hereto (hereinafter called the "Agreement") is hereby acknowledged by the undersigned (hereinafter called the "Lessee"). As of December 18, 1973 the Lessee does hereby agree with, and for the benefit of, J. P. Morgan Interfunding Corp. (hereinafter called the "Purchaser"), the assignee and purchaser named in the foregoing Agreement, and its successors and assigns, as follows:

1. ASSIGNMENT. (a) Attornment. Lessee hereby accepts the Purchaser as Lessor under and pursuant to the Lease to the extent and in the manner required by the provisions thereof and of the Agreement and hereby agrees to pay directly to the Purchaser at 37 Wall Street, New York, New York 10005, any amount in respect of rentals under Section 2.2 of the Lease, in respect of indemnification and insurance under Sections 2.5 and 2.6 thereof, in respect of casualties and condemnation under Article Three thereof, and any and all other amounts payable to the Lessor under the Lease in accordance with the terms thereof and to direct to the Purchaser at its above address the notices, documents or other communications required to be

given to the Lessor pursuant to any provision of the Lease;

(b) Opinion. Lessee will make available on the closing date under Section 2.1 of the Agreement opinion of its counsel complying with clause (e) of said Section 2.1 and with Section 5.2 of the Lease;

(c) Sales Tax. Lessee will pay directly to the Manufacturer named in the Agreement and the Lease any amounts payable on account of any sales tax (or compensating use or similar tax) of any jurisdiction imposed upon the sale to and the purchase by the Purchaser of the Equipment in accordance with the provisions of the Agreement; and

(d) Expenses. Lessee will pay or reimburse the Purchaser for all of its reasonable out-of-pocket expenses (including fees and disbursements of its counsel) incurred in connection with the preparation for and/or the consummation of the transactions contemplated by the Lease and the Agreement, including the preparation and review of such documents, the leasing and purchase of the Equipment and the closing of the payment of the purchase price for the Equipment and recording and reproduction costs and other miscellaneous expenses in connection therewith.

2. SPECIAL TAX INDEMNIFICATION. (a) Indemnity for Loss of Investment Credit. If the Purchaser shall lose the benefit of any portion of the full 7% investment credit allowed by Section 38 of the Internal Revenue Code (the "Code") for "new section 38 property" with respect to the full amount of the Purchase Price (as defined in the Agreement) of the Equipment (calculated for purposes of this Section 2 without subtraction of the amount of any refunds paid by the Manufacturer to Lessee or Lessor, pursuant to any contract with the Manufacturer) for any of the Equipment, under any circumstances or for any reason whatsoever, the Lessee shall pay the Purchaser (1) a sum which, after deduction of all taxes required to be paid by the Purchaser in respect of the receipt of such sum under the laws of any federal, state or local government or taxing authority in the United States, shall be equal to the sum of the amount of the investment credit so lost and the amount of any penalties or additions to tax which are not deductible for federal income tax purposes, plus (2) the amount of any interest and the amount of any penalties or additions to tax which are deductible for United States federal income tax purposes which may be payable to the United States government by the Purchaser in connection with such loss, which amounts shall be payable at such time as the tax and interest attributable to

such loss is payable (but not sooner than 30 days after receipt by the Lessee of written notice from the Purchaser); provided, however, that the Lessee shall not be required to make such payments if such loss results because of the occurrence of any of the following events:

(i) A voluntary transfer by the Purchaser of legal title to the Equipment to anyone (not including any transfer of a security interest therein or any transfer which is permissible hereunder or under the Lease or the Agreement, except for Section 4.1 thereof) or a disposition by the Purchaser of any interest in the Equipment (except by way of a grant of a security interest or any transfer which is permissible hereunder or under the Lease or the Agreement, except for Section 4.1 thereof) or a reduction by the Purchaser of its interest in the rents and profits from the Equipment, if such transfer, disposal or reduction by the Purchaser (A) shall be the direct cause of such loss and (B) shall occur at any time while the Equipment is leased under the Lease and none of the Events of Default listed in Section 4.1 of the Lease has occurred and is continuing unremedied and (C) shall not have been in compliance with

the applicable provisions hereof and of the Lease and the Agreement.

(ii) An amendment of the Agreement without the prior written consent of the Lessee, if such amendment shall be the sole and direct cause of such loss.

(iii) The failure of the Purchaser to have sufficient liability for tax within the meaning of Section 46 of the Code against which to credit such investment credit for the Equipment.

(iv) The failure of the Purchaser to claim such investment credit for the Equipment in its income tax returns for the appropriate year or to follow the proper procedure in claiming such investment credit in such tax returns for such year, if such failure to claim such investment credit or to follow such procedure shall preclude the Purchaser from claiming such investment credit.

(v) The failure of the Purchaser to take timely action in contesting a claim made by the Internal Revenue Service with respect to the loss of such investment credit for the Equipment pursuant to paragraph (c) of this Section 2, if such failure precludes the right of the Purchaser to contest with respect thereto such claim.

(vi) The action of the Internal Revenue Service contrary to the conclusions set forth in the ruling, if any, obtained and accepted by the Purchaser referred to in Section 3 hereof, provided, however, that Purchaser shall be entitled to indemnification hereunder if such action is taken by the Internal Revenue Service directly or indirectly as a result of (A) any representation, fact, estimate, opinion or other statement made, stated or furnished by the Lessee or any officer, employee, agent or counsel thereof or any other person acting at Lessee's request (including any such statement made or furnished jointly with the Purchaser or any officer, employee, agent or counsel thereof) in connection with the obtaining of such ruling proving to be, or in the opinion of the Internal Revenue Service proving to be, fraudulent, untrue, incorrect, inaccurate, misleading, unreasonable or insufficient in whole or in part, (B) the Lessee or any officer, employee, agent or counsel thereof failing to state, or in the opinion of the Internal Revenue Service failing to state any material fact in connection with the obtaining of said ruling, or (C) the Lessee taking or failing to take, or being deemed by the

Internal Revenue Service to have taken or to have failed to take, any action in respect of its income tax returns or otherwise which is, or in the opinion of the Internal Revenue Service is, inconsistent with or in contravention of any of the matters set forth in such ruling.

(b) Indemnity for Loss of Depreciation Deductions.

If the Purchaser shall lose the benefit of any portion of the depreciation deductions on any of the Equipment on the basis of the depreciation period specified in Section 3 hereof, as applicable in accordance with the provisions of Section 167(m) of the Code under any of the methods of depreciation allowed by Section 167(b) of the Code, with respect to the Purchase Price of the Equipment (calculated for the purposes of this Section 2 without subtraction of the amount of any refunds paid by the Manufacturer to Lessee or Purchaser pursuant to any contract with the Manufacturer) for the Equipment in computing its taxable income for any year during which the Lease is in effect, under any circumstances or for any reason whatsoever then the Lessee shall pay to the Purchaser an indemnity with respect to such loss determined as provided below; provided, however, that the Lessee shall not be required to pay any such

indemnity if such loss results because of the occurrence of any of the following events:

(i) A voluntary transfer by the Purchaser of legal title to the affected Equipment to anyone (not including any transfer of any security interest therein or any transfer which is permissible hereunder or under the Lease or the Agreement, except for Section 4.1 thereof), or a disposition by the Purchaser of any interest in the affected Equipment (except by way of a grant of a security interest or any transfer which is permissible hereunder or under the Lease or the Agreement, except for Section 4.1 thereof) or a reduction by the Purchaser of its interest in the rents and profits from the affected Equipment, if such transfer, disposal or reduction by the Purchaser (A) shall be the direct cause of such loss and (B) shall occur at any time while the affected Equipment is leased under the Lease and none of the Events of Default listed in Section 4.1 of the Lease has occurred and is continuing unremedied and (C) shall not have been in compliance with the applicable provisions hereof and of the Lease and the Agreement.

(ii) An amendment of the Agreement without the

prior written consent of Lessee, if such amendment shall be the direct cause of such loss.

(iii) The failure of the Purchaser to have sufficient gross income within the meaning of Section 61(a) of the Code against which to deduct such depreciation.

(iv) The failure of the Purchaser to claim such depreciation deductions in its income tax returns for the appropriate years or to follow the proper procedure in claiming such depreciation deductions in such tax returns for such years, if such failure to claim such depreciation deductions or to follow such procedure shall preclude the Purchaser from claiming such depreciation deductions.

(v) The failure of the Purchaser to take timely action in contesting a claim made by the Internal Revenue Service with respect to the loss of such depreciation deductions for the affected Equipment pursuant to paragraph (c) of this Section 2 if such failure shall preclude the right of the Lessor to contest such claim.

(vi) The action of the Internal Revenue Service contrary to the conclusions set forth in the ruling, if any, obtained and accepted by the Purchaser referred

to in Section 3 hereof, provided, however, that Purchaser shall be entitled to indemnification if such action is taken by the Internal Revenue Service directly or indirectly as a result of (A) any representation, fact, estimate, opinion or other statement made, stated or furnished by the Lessee or any officer, employee, agent or counsel thereof or by any other person at the request of Lessee (including any such statement made or furnished jointly with the Purchaser or any officer, employee, agent or counsel thereof) in connection with the obtaining of such ruling proving to be, or in the opinion of the Internal Revenue Service proving to be, fraudulent, untrue, incorrect, inaccurate, misleading, unreasonable or insufficient in whole or in part, (B) the Lessee or any officer, employee, agent or counsel thereof failing to state, or failing to state in the opinion of the Internal Revenue Service, any material fact in connection with the obtaining of said ruling or (C) the Lessee or any officer, employee, or counsel thereof or a third party at the request of Lessee taking or failing to take, or being deemed by the Internal Revenue Service to have taken or to have failed to take, any action in respect of

its income tax returns or otherwise which is, or in the opinion of the Internal Revenue Service is, inconsistent with or in contravention of any of the matters set forth in such ruling.

Any indemnity payments required by any of the preceding paragraphs of this Subsection (b) shall be, with respect to each taxable year of the Purchaser, a sum which, after deduction of all taxes, fees and other charges required to be paid by the Purchaser in respect of the receipt of such sum under the laws of any federal, state or local government or taxing authority in the United States, shall be equal to the amount of any additional federal income taxes, interest and penalties required to be paid with respect to such year by reason of such loss of depreciation deductions which may be payable to the United States government by the Purchaser in connection with such loss and shall be payable at such time as such additional income taxes are payable (but not sooner than thirty days after receipt by the Lessee of written notice from the Purchaser).

If the Purchaser as a result of such loss of depreciation deductions with respect to any year under circumstances which required the Lessee to indemnify the Purchaser with respect to such loss, becomes entitled to

the benefit of additional depreciation deductions with respect to any subsequent year, the Purchaser shall pay the Lessee an amount equal to the sum of the tax benefit in respect of federal income taxes payable to the United States Government realized by the Purchaser with respect to such subsequent year because of such additional depreciation deductions plus any tax benefit realized under the laws of any federal, state or local government or taxing authority in the United States by reason of such payment; provided, however, that (i) such sum shall not exceed the excess of the amounts previously paid by the Lessee to the Purchaser pursuant to this Section 2(b) over the amounts previously paid by the Purchaser to the Lessee pursuant to this Section 2(b), and (ii) such sum shall not be payable before such time as the Lessee shall have made all payments or indemnities then due pursuant to this Section.

(c) Contest of Disallowance of Tax Benefits. In the event a deficiency, assessment or other claim shall be made by the Internal Revenue Service which, if successful, would result in a loss of such investment credit or of such depreciation deductions with respect to the Equipment under circumstances which would require the Lessee to indemnify the Purchaser for the loss, the Purchaser hereby agrees to take at Lessee's expense such action in connection with contesting such claim as the Lessee

shall reasonably request in writing from time to time, provided, however, that:

(i) Within thirty days after notice by the Purchaser to the Lessee of such claim, the Lessee shall request that such claim be contested.

(ii) The Purchaser, at its sole option, may forego any and all administrative appeals, proceedings, hearings and conferences with the Internal Revenue Service in respect of such claim and may, at its sole option, either pay the tax claimed and sue for a refund in the appropriate United States District Court, the United States Court of Claims, or both, as the Purchaser shall elect, or contest such claim in the United States Tax Court, considering, however, in good faith such request as the Lessee shall make concerning the most appropriate forum in which to proceed.

(iii) Prior to taking such action, the Lessee shall have furnished the Purchaser with an opinion of its tax counsel to the effect that a meritorious defense exists to such claim.

(iv) The Lessee shall have provided the Purchaser with specific written supplemented indemnification in a form and substance satisfactory to the Purchaser

for any liability or loss which the Purchaser may incur as the result of contesting such claim and shall have agreed to pay the Purchaser on demand all costs and expenses which the Purchaser may incur in connection with contesting such claim, including, without limitation, (A) reasonable attorneys' and accountants' fees and disbursements, (B) the amount of any interest, additional amount or penalty which may ultimately be payable to the United States Government as a result of contesting such claim, and (C) in the event the Purchaser shall pay the tax claimed and then seek a refund and the final determination of such claim shall be adverse to the Purchaser, interest at a rate equal to 9.026% per annum, compounded monthly on the amount of the tax paid attributable to the portion of the investment credit or depreciation deduction lost, computed from the date of payment of such tax to the date the Lessee shall reimburse the Purchaser for the payment of such tax in accordance with the terms hereof. If any such claim referred to above shall be made by the Internal Revenue Service and the

Lessee shall have reasonably requested the Purchaser to contest such claim as above provided and shall have duly complied with all of the terms of this Section 2(c), the Lessee's liability with respect to the investment credit or depreciation deduction lost as a consequence of such claim shall become fixed upon final determination of the liability of the Purchaser for the tax claimed and after giving effect to any refund obtained, together with interest thereon; but in all other cases the liability of the Lessee shall become fixed at the time the Purchaser makes payment of the taxes, fees or other charges attributable to the portion of the investment credit or depreciation deduction lost. In the case of any such claim by the Internal Revenue Service referred to above, the Purchaser will agree to notify the Lessee promptly in writing of such claim and agrees not to make payment of the tax claimed for at least thirty days after the giving of such notice and agrees to give to the Lessee any relevant information relating to such claim which may be particularly within the knowledge of the Purchaser and otherwise to cooperate with the Lessee in good faith in order to contest any such claim effectively.

3. PURCHASE OBLIGATION IF FAVORABLE TAX RULINGS NOT RECEIVED. If on or prior to June 30, 1974 there shall not have been received by Purchaser a ruling or rulings from the Internal Revenue Service of the United States of America, in form and substance satisfactory to Purchaser and to its counsel, to the effect that the Purchaser shall be entitled, with respect to the transactions contemplated in the Lease, (i) to claim the full 7% investment tax credit provided for by the Code with respect to the Purchase Price of the Equipment and (ii) to take depreciation deductions with respect to such Purchase Price using a depreciation period of 12 years pursuant to Section 167(m) of the Code and any method of depreciation allowed by Section 167(b) of the Code, the Lessee agrees to purchase all of the Purchaser's right, title and interest in and to the Equipment and the Agreement (for purposes of this Section 3 collectively referred to as the "Purchaser's Interest") within thirty days after receipt of written notice to such effect, at a price computed as hereinafter provided.

The price at which any purchase of the Purchaser's Interest pursuant to the foregoing provisions of this Section 3 is made shall be paid in immediately available funds and shall be an amount equal to the sum of (i)

the aggregate of all amounts paid or to be paid by the Purchaser as the Purchase Price of the Equipment pursuant to the Agreement and the Lease, (ii) an amount equal to interest at the rate of 9.026% per annum, compounded monthly, on all amounts paid on account of such Purchase Prices, computed from the respective dates of such payments to the date of payment pursuant hereto, and (iii) all administrative costs, counsel fees, accounting fees and other expenses of Purchaser incurred in effecting the purchase by the Lessee of Purchaser's Interest pursuant hereto.

In connection with any purchase of the Purchaser's Interest pursuant to this Section 3, upon receipt of the purchase price therefor the Purchaser will promptly deliver to the Lessee such documents as the Lessee may reasonably request to evidence its acquisition of the Purchaser's Interest as aforesaid. After any such purchase the Lessee shall perform all of the obligations and be entitled to all of the rights of the Purchaser under the Agreement as if originally named as the Purchaser therein.

4. CROSS-DEFAULT. The Lessee agrees that the undertakings contained in the foregoing Sections and 3 shall

be deemed to be covenants on the part of the Lessee contained in the Lease for the purposes of Article Four thereof.

CHICAGO, ROCK ISLAND
AND PACIFIC RAILROAD COMPANY

[Corporate Seal]

ATTEST:

By

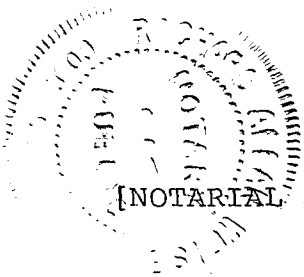
VICE

President

E. F. Wilkinson
Secretary

STATE OF *Illinois*)
COUNTY OF *Cook*) : ss.:

On this *18th* day of *December*, 1973 before me personally appeared *THOMAS I. MEGAN*, to me personally known, who, being by me duly sworn, says that he is ^{*VICE*} President of CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Richard Allan Weise
Notary Public

NOTARY PUBLIC STATE OF ILLINOIS
MY COMMISSION EXPIRES DEC. 2, 1974